

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Bausch & Lomb Incorporated,
Opposer,
v.
Skin Food Pty Ltd.,
Applicant.

No. 91174116

U.S. Trademark Application Serial
No. 78/563,005

APPLICANT SKIN FOOD PTY
LTD.'S MOTION TO AMEND
APPLICATION


Applicant, Skin Food Pty Ltd., respectfully moves the Trademark Trial and Appeal Board for approval of an amendment to the identification of goods in the instant U.S. Trademark Application No. 78/563,005.

Pursuant to 37 C.F.R. § 2.133 and TBMP § 514, Applicant respectfully requests the application be amended by deleting the International Class 5 goods in their entirety from the application. The application will retain the International Class 3 goods in their entirety, and go forward to register the RENUCELL mark for those goods only.

This motion has not been consented to by Opposer.

Dated this 29 day of June, 2007.

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}


Gary S. Kindness, Reg. No. 22,178
Attorney for Applicant Skin Food Pty Ltd.

07-02-2007

U.S. Patent & TMO/TM Mail Rpt Dt. #11

Certificate of Mailing

I hereby certify that this Applicant Skin Food Pty Ltd.'s Motion to Amend Application is being deposited with the U.S. Postal Service in a sealed envelope as first-class mail with postage thereon fully prepaid and addressed to the Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451, on the below date.

Date: 6/29/07

APPLICANT SKIN FOOD PTY LTD.'S
MOTION TO AMEND APPLICATION - 1
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Certificate of Service

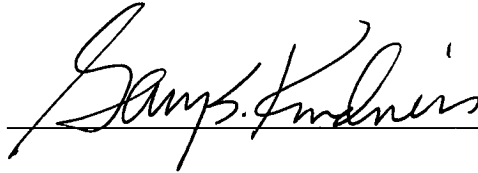
I hereby certify that this Applicant Skin Food Pty Ltd.'s Motion to Amend Application is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to:

Jon O. Webster, Attorney for Opposer
Bausch & Lomb Incorporated
One Bausch & Lomb Place
Rochester, NY 14604-2701

on the below date

Date:

6/29/07



GSK/PAS:aew

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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Bausch & Lomb Incorporated,
Opposer,
v.
Skin Food Pty Ltd.,
Applicant.

No. 91174116
U.S. Trademark Application Serial
No. 78/563,005
APPLICANT SKIN FOOD PTY
LTD.'S MOTION FOR
SUMMARY JUDGMENT
DISMISSAL OF OPPOSITION

Based on the assumption that Applicant's concurrent motion to delete the International Class 5 goods in their entirety from its application will be granted, Applicant respectfully moves the Trademark Trial and Appeal Board for an order pursuant to Fed. R. Civ. P. 56 and 37 C.F.R. § 2.127 granting summary judgment dismissal of this opposition.

BRIEF IN SUPPORT OF MOTION

There are no justicable issues remaining as a result of Applicant's deletion of the International Class 5 goods in their entirety from the application because these are the only goods that are the subject of this opposition.

Opposer explicitly states, "Opposer is not opposing the class 3 portion of application." Notice of Opposition at ¶ 6.

There is no dispute that Opposer explicitly stated that it was not opposing the registration of Applicant's RENUCELL mark for the goods identified in International Class 3. Opposer's opposition to Applicant's application to register its mark is based entirely on what Opposer alleged is a likelihood of confusion with its prior registered RENU mark should the Applicant's mark be allowed to register for the identified goods in International Class 5. By deleting those goods in their entirety from this application, Applicant contends that Opposer has no grounds for opposing the application.

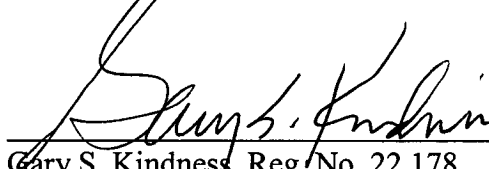
1 Since there is no genuine issue of material fact in dispute on the issues of likelihood of
2 confusion or false suggestion of connection, Applicant, Skin Food Pty Ltd., is entitled to
3 judgment as a matter of law.

4 This motion is supported by the Applicant's concurrent motion for TTAB approval to
5 amend the Applicant's identified goods by deleting the International Class 5 goods in their
6 entirety.

7 WHEREFORE, Skin Food Pty Ltd. respectfully requests that the Board grant its
8 summary judgment and which will result in dismissal of this opposition and the application
9 proceeding to registration.

10 Dated this 29 day of June, 2007.

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12 CHRISTENSEN O'CONNOR
13 JOHNSON KINDNESS^{PLLC}

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16 Gary S. Kindness, Reg. No. 22,178
17 Attorney for Applicant Skin Food Pty Ltd.

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19 **Certificate of Mailing**

20 I hereby certify that this Applicant Skin Food Pty Ltd.'s Motion for Summary Judgment Dismissal of
21 Opposition is being deposited with the U.S. Postal Service in a sealed envelope as first-class mail with postage
22 thereon fully prepaid and addressed to the Trademark Trial and Appeal Board, U.S. Patent and Trademark Office,
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8 Bausch & Lomb Incorporated
9 One Bausch & Lomb Place
10 Rochester, NY 14604-2701

11 on the below date.

12 Date:

13 6/29/07

14 *Dan S. Kindness*

15 GSK/PAS:aew